



SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Docket No. SSA-2021-0014]

RIN 0960-AI60

Omitting Food From In-Kind Support and Maintenance Calculations

AGENCY: Social Security Administration.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: We propose to update our regulations to remove food from the calculation of In-Kind Support and Maintenance (ISM). We also propose to add conforming language to our definition of income, excluding food from the ISM calculation.

Accordingly, Supplemental Security Income (SSI) applicants and recipients would no longer need to provide information about their food expenses for us to consider in our ISM calculations. We expect that these changes will simplify our rules, making them less cumbersome to administer and easier for the public to understand and follow. These simplifications would make it easier for SSI applicants and recipients to comply with our program requirements, which would save time for both them and us, and improve the equitable treatment of food assistance within the SSI program. The proposed rule also includes other, minor revisions to the regulations related to income, including clarifying our longstanding position that income may be received “constructively” (we will define this term below).

DATES: To ensure that your comments are considered, we must receive them no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2021-0014 so that we may associate your comments with the correct regulation.

CAUTION: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. Internet: We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <https://www.regulations.gov>. Use the “search” function to find docket number SSA-2021-0014. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to one week for your comment to be viewable.

2. Fax: Fax comments to 1-833-410-1631.

3. Mail: Mail your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 6401 Security Boulevard, 3rd Floor (East) Altmeyer Building, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at <https://www.regulations.gov> or in person, during regular business hours, by arranging

with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Tamara Levingston, Office of Income Security Programs, 6401 Security Blvd, Robert M. Ball Building, Suite 2512B, Woodlawn, MD 21235, 410-966-7384. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <https://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

We administer the Supplemental Security Income (SSI) program. SSI provides monthly payments to: 1) adults and children with a disability or blindness; and 2) adults age 65 and older. These individuals must meet multiple eligibility requirements, including having resources and income below specified amounts.¹ Resources are cash or other liquid assets, or any real or personal property that individuals (or their spouses, if any) own and could convert to cash to be used for their support and maintenance.² Income is anything the applicant or recipient receives in cash or in-kind that can be used to meet food and shelter needs.³ Applicants' and recipients' resources may affect their SSI eligibility, while their income may affect both their eligibility and payment amounts.

Once a claimant is found eligible for SSI, their monthly payment is determined by subtracting countable income from the Federal benefit rate (FBR), which is the monthly maximum Federal SSI payment.⁴ The FBR for 2023 is \$914 for an individual and \$1,371

¹ See 20 CFR 416.202 for a list of the eligibility requirements. See also 20 CFR 416.420 for general information on how we compute the amount of the monthly payment by reducing the benefit rate by the amount of countable income as calculated under the rules in subpart K of 20 CFR part 416.

² 20 CFR 416.1201.

³ 20 CFR 416.1102. See also 20 CFR 416.1103 for examples of items that are not considered income.

⁴ See 20 CFR 416.405 through 416.415. Some States supplement the FBR amount.

for an eligible individual with an eligible spouse.⁵

Typically, after the first \$65 earned each month, a recipient's SSI benefit will be reduced 50 cents for every \$1 of *earned* income. For example, a recipient who earns \$101 each month from a part-time job would receive \$896 in monthly benefits in 2023. This is calculated by excluding the first \$65 of the \$101 earned (\$36 remaining) and then reducing the SSI payment by half of that amount—an \$18 reduction against the original payment of \$914. Additionally, for income that is *unearned* (for example, cash received from a family member), after the first \$20 received each month, for each dollar of unearned income a recipient's SSI payment is reduced by \$1. For example, a recipient who received \$50 from a grandparent each month would receive in \$884 in monthly SSI benefits. This is calculated by excluding the first \$20 of the \$50 received (\$30 remaining) and then reducing the SSI payment by that amount—a \$30 reduction against the original payment of \$914.

Income that affects the monthly benefit amount can be provided in cash or in-kind. Generally, we assess in-kind items at their current market value⁶ under the presumption that they can be sold or otherwise converted to meet expenses. However, we treat the actual provision of in-kind contributions of food or shelter to an applicant or recipient differently than any other type of in-kind item.

Specifically, when food,⁷ shelter, or both are provided to an SSI applicant or recipient (e.g., someone pays for rent, mortgage, food, or utilities), we consider it “in-kind support and maintenance” (ISM).⁸ For example, if an applicant or recipient lives

⁵ 87 FR 64296, 64298 (2022). A table of the monthly maximum Federal SSI payment amounts for an eligible individual, and for an eligible individual with an eligible spouse, is available at <https://www.ssa.gov/oact/cola/SSlamts.html>. When the FBR is adjusted for the cost of living, the amount of the potential ISM reduction adjusts accordingly.

⁶ Current market value (CMV) means the price of an item on the open market in your locality (20 CFR 416.1101). We generally determine that the CMV of food or shelter is equal to the amount a vendor would charge for it.

⁷ We use the term “food” as commonly defined (e.g., it includes items like groceries and meals purchased from a restaurant).

⁸ Cash provided to purchase food is not considered as ISM. It is considered cash.

with his brother and does not pay rent, we would consider the shelter that his brother provides as ISM. Similarly, if an applicant or recipient lives with a friend and consumes the food in her friend's home but does not contribute toward the food or rent, we consider the food and shelter that the friend provides as ISM. As another example, if an applicant or recipient lives alone but her parents bring her groceries each month and pay her utility bills, we consider her parents' help as ISM.

In these circumstances, due to the complexity of determining the precise value of ISM and how these forms of support impact overall household operating expenses for a given individual, we typically reduce the SSI benefit by approximately one-third.⁹ We discuss the specific means of doing so in the next section.

Because ISM requires that applicants or recipients receive food, shelter, or both, by definition, ISM does not apply if applicants or recipients live alone and pay for their own food and shelter, or if they live with other people and pay their pro rata share of the food and shelter expenses.¹⁰ Further, ISM does not apply when applicants or recipients live only with a spouse and minor children, and nobody outside the household pays for their food and shelter, regardless of whether the spouse or minor child provides food or shelter.¹¹ Additional circumstances are discussed further in our regulations.¹²

Like other forms of income, ISM can reduce the amount of SSI benefits. When ISM applies, we determine its value using one of two rules: 1) the Value of the One-

⁹ The SSI program included the one-third reduction provision in the statute to prevent us from having to determine the actual value of room and board when a recipient lives with a friend or relative. For more information, see Balkus, Richard; Sears, James; Wilschke, Susan; and Wixon, Bernard. *Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of In-kind Support and Maintenance*. Social Security Bulletin, vol. 68, no. 4, 2008, www.ssa.gov/policy/docs/ssb/v68n4/v68n4p15.html.

¹⁰ As a general principle, if SSI recipients do not contribute their pro-rata share of household operating expenses, but they do contribute an amount within \$20 of their pro rata share of household operating expenses, we treat the situation as if the recipients pay their pro-rata share under our tolerance policy, and do not reduce benefits because of ISM.

¹¹ See 20 CFR 416.1148.

¹² See 20 CFR 416.1142 through 416.1148.

Third Reduction (VTR) rule or 2) the Presumed Maximum Value (PMV) rule.¹³

The VTR Rule

The VTR rule applies when an applicant or recipient¹⁴ lives throughout a month in another person's household and receives both food and shelter from others living in that household.¹⁵

Example: Joe lives in his cousin's house and consumes the food in his cousin's house. He does not contribute toward the food or rent. We would assess the ISM Joe receives under the VTR rule because he lives in another person's household and receives food and shelter from someone in that household.¹⁶

Under the VTR rule, we reduce by one-third the applicable FBR.¹⁷ Because the FBR for 2023 is \$914 for an individual and \$1,371 for an eligible individual with an eligible spouse, when we apply the VTR rule in 2023, we reduce SSI benefits by \$304.66 ($\$914 \times 1/3$) for individuals and \$457 ($\$1,371 \times 1/3$) for an eligible individual with an eligible spouse.¹⁸ This means the maximum this individual could receive in SSI benefits for that month is \$609.34. This amount is calculated and applied before we look at certain

¹³ See 20 CFR 416.1130, 416.1131, and 416.1140.

¹⁴ We refer to "applicant or recipient" here and throughout the NPRM when we mean "applicant, recipient, or couple" for ease of reference, except where reference to the couple is specifically relevant.

¹⁵ See 20 CFR 416.1132 for how we define living in another person's household. To clarify, we note that under current rules, we apply the VTR rule when an applicant or recipient lives in another person's household throughout a month and all the food and shelter expenses are paid in part by others living inside the household and part from outside. See also Program Operations Manual System (POMS) SI 00835.200.

¹⁶ SSI applicants and recipients are responsible for reporting changes to their living arrangements as they occur to ensure an accurate calculation of their monthly benefit amount. Recipients are informed of these reporting responsibilities during their initial claim, pre-effectuation, and redetermination. This means applicants and recipients are responsible for reporting many factors related to their benefits, including changes to food expenses, which may fluctuate from month to month. See 20 CFR 416.701 through 416.714 for reporting responsibilities.

¹⁷ The one-third reduction is established by statute. See section 1612(a)(2)(A) of Social Security Act (Act) (42 U.S.C. 1382a(a)(2)(A)). Accordingly, we are not proposing changes to the calculation of benefits under the VTR rule.

¹⁸ See 20 CFR 416.1147 through 416.1149 for special circumstances.

other factors, such as earned income, which could further reduce the benefit amount.

The PMV Rule

The PMV rule applies when an applicant or recipient receives ISM, but the VTR rule does not apply. This means we apply the PMV rule when an applicant or recipient receives ISM but does not receive both food and shelter from the household in which the applicant or recipient lives.¹⁹ In other words, the PMV rule would apply when applicants or recipients live in their own household, but someone helps them with food, shelter, or both; they live in someone else's household, but only receive food or shelter (not both) from the household in which they live;²⁰ or they live in a non-medical institution as described in 20 CFR 416.1141(c).

Example: Lola lives with her minor daughter in an apartment. Lola's mother brings them groceries every week and pays two-thirds of Lola's rent. Although Lola receives assistance with both food and shelter, we assess the ISM Lola receives under the PMV rule, because she lives in her own household.

Example: Michael lives with his sister in his sister's apartment. He does not pay rent but pays for his own food.²¹ He has special dietary restrictions and does not

¹⁹ Currently, when deciding whether to apply the PMV or VTR rule, we consider that an applicant or recipient is not subject to the VTR rule when the applicant or recipient (or at least one member of an eligible couple) designates part or all of his or her contribution toward household operating expenses for food or shelter and the contribution equals or exceeds the pro rata share of household operating expenses for food or shelter. This is because the applicant or recipient is not receiving both food and shelter from the household in which he or she resides. In other words, we evaluate ISM under the PMV rule when applicants or recipients contribute their share of food or shelter to their household operating expenses. See 20 CFR 416.1130 through 416.1141.

²⁰ Unlike the VTR rule, which as previously explained derives the one-third reduction explicitly from section 1612(a)(2)(A) of the Act, we established the PMV rule through our rulemaking authority. The PMV rule enables us to efficiently reduce benefits when ISM is involved instead of having to attempt to value the ISM, but also allows individuals to rebut and use a real valuation of the ISM if they believe it would be beneficial for their claim.

²¹ If applicable, under our current policies, we ask applicants or recipients if their contributions are

consume any of the household's food. Though he lives in another person's household, we would assess the ISM Michael receives under the PMV rule, because he does not receive both food and shelter from that household (he only receives shelter).

Example: John, an eligible individual, leaves his permanent residence and enters a jail on March 15. He is released on May 6 to his home where he has rental liability and pays for all of his food and shelter. No ISM is charged in March for the period spent in jail because, as of the first of the month, he was in his permanent residence and he was not incarcerated throughout the month. In April, John is considered ineligible for a benefit payment due to incarceration for a full month. However, upon release, his benefits are reinstated, and John is charged ISM under the PMV rule for the food and shelter received while in jail from May 1 through May 6. He is not charged ISM under the VTR rule because he did not receive food and shelter throughout a month.

Under the PMV rule, any food or shelter received is presumed to be worth a set maximum value, unless the applicant or recipient rebuts this presumption. The set maximum value is one-third of the FBR, plus the amount of the general income exclusion, which is currently \$20.²² Therefore, when we use the set maximum value under the PMV rule, we reduce SSI benefits by \$324.66 (one-third of the current FBR of \$914 (\$304.66), plus the general income exclusion of \$20) for individuals and \$477 (one-third of the current FBR of \$1,371 (\$457), plus the general income exclusion of \$20) for

allocated for food or shelter. When we ask if they are earmarking their contribution to either food or shelter and they say, "no," we look at the contribution to determine if they meet their pro rata share of all expenses listed on the Household Expenses and Contributions page within the SSI Claims System.

²² See §416.1124(c)(12).

couples. Applicants or recipients can rebut the presumption that the food or shelter is worth the set maximum value. If applicants or recipients successfully rebut that presumption, we reduce their benefits by a smaller amount or not at all.²³ Note that the \$20 general income exclusion does not apply when we use the VTR rule.²⁴

To rebut the presumption that the food or shelter provided is worth the maximum value, the applicant or recipient, or the applicant's or recipient's representative payee, must provide evidence showing that either: 1) the current market value of any food or shelter received, minus any payment that someone makes for them, is less than the PMV; or 2) the actual amount someone else pays for the applicant's or recipient's food or shelter is less than the PMV. The applicant, recipient or representative payee has 30 days to submit evidence of a lower amount (e.g., a payment receipt, a bill with a lower amount, a bank payment). If the evidence is not provided, we calculate the applicant's or recipient's ISM using the set maximum value.

When applying the PMV rule, we consider whether ISM is provided by someone inside the household, outside the household, or both; the number of people in the household; and whether the applicant or recipient is unmarried or part of an eligible couple.²⁵ ISM calculations under the PMV rule account for these factors to determine an applicant's or recipient's pro rata share of the total household operating expenses.²⁶ Once we have determined the pro rata share of the household operating expenses, we then consider the applicant's or recipient's contribution toward those expenses. The difference

²³ 20 CFR 416.1140(2)(ii).

²⁴ See §416.1124(c)(12).

²⁵ For example, if the applicant or recipient is part of an eligible couple, we follow the same steps as we would to compute an individual's ISM amount using the PMV rule except we double the pro rata share of expenses (to account for two people), and we subtract the couple's combined contribution (instead of the individual's contribution) toward the household operating expenses.

²⁶ Household operating expenses are the household's total monthly expenditures for food, rent, mortgage, property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection service. (20 CFR 416.1133). Under the proposed policy, food would be omitted from this calculation. Note that this term is distinct from certain uses of "household expenses" in other aspects of the SSI program, such as the monthly household expenses information collected on the SSA-632 (Request for Waiver of Overpayment Recovery).

between the applicant's or recipient's share of the expenses and the applicant's or recipient's contribution toward those expenses is the amount by which we reduce the applicant's or recipient's benefits for ISM (up to the applicable limit).

Example: Larry lives with his brother and sister-in-law in their household. If he receives both food and shelter from his brother and sister-in-law, we would assess his ISM under the VTR rule, reducing his benefits by \$304.66 each month. However, in this example, he provides evidence that he pays for his share of shelter expenses, so we assess his ISM under the PMV rule (because he is not receiving both food and shelter from the household in which he lives). He tells us that he consumes the household's food, but that he does not contribute toward the food expenses. Upon prompting from our technician about whether he wished to rebut the presumption of the maximum value, Larry rebuts the presumption that the food or shelter provided is worth the maximum value and demonstrates that the household's food expenses are \$500 monthly.²⁷ We consider Larry's share of

²⁷ When explaining PMV and the process of rebutting to an applicant or recipient, we do not provide a specific script to our technicians (see SI 00835.320 B.2 for the guidance we provide technicians.) In summary, technicians explain to applicants or recipients: 1) that they are receiving ISM, 2) what form of ISM we are charging and the value, and 3) that they have the right to rebut the PMV. While we do not require technicians to use the term "rebut," it has been used historically in our written communications with the applicant or recipient, including the "Rebuttal Rights Notification" letter that is sent after the conversation.

Procedurally, when applicants or recipients choose to rebut the PMV, the technician explains to them that they have 30 days to provide evidence showing that the actual value is less than the PMV. In some cases, an applicant or recipient may have evidence in-hand to present to us, the technician is able to verify the household expenses, and the rebuttal is easily processed. Otherwise, the applicant or recipient is responsible for providing us the necessary evidence within 30 days. However, if the individual indicates a need for assistance, the technician is responsible for assisting to obtain the necessary evidence, per policy.

We have found that most applicants and recipients who state they wish to rebut the PMV follow up within 30 days with the necessary documentation. Some applicants and recipients state they want to rebut, but don't provide the documentation within 30 days, and so the PMV generally is applied.

We do not have any indication that applicants and recipients for whom the PMV applies have any confusion surrounding the term "rebuttal" or face procedural challenges or undue burdens with understanding or providing the necessary evidence to successfully rebut the PMV. We have also not historically received any feedback regarding concerns with how this information is presented in the

the food expenses to be \$166.66 (the total household food expenses divided among three people), and we reduce Larry's benefits by this amount. For comparison, the set maximum value under the PMV rule would have reduced his benefits by \$324.66, and the VTR rule would have reduced his benefits by \$304.66.

As an example, we have provided the steps we use to calculate the value of ISM for an unmarried applicant or recipient, who has rental liability, when the ISM is provided by someone within the same household:

Step 1: Divide the total household operating expenses (including food expenses) by the number of household members. The result is the applicant's or recipient's pro rata share.

Step 2: Subtract the applicant's or recipient's contribution to the household operating expenses (including food expenses) from the applicant's or recipient's pro rata share. The result is the actual value of ISM. (The actual value cannot be less than \$0.)

"Rebuttal Rights Notification" letter that is typically sent as follow-up after the conversation between the technician and the applicant or recipient. However, as noted in the section of this NPRM entitled "Solicitation for Public Comment," we are specifically seeking comment regarding the experience of understanding and rebutting the PMV, including any feedback related to the clarity of the concept of "rebuttal," suggestions for improving the "Rebuttal Rights Notification" letter (which we have documented), and other potential regulatory or programmatic improvements to simplify the rebuttal process. We note that while we may not be able to implement suggestions as an element of the final rule, feedback may still help inform future decisions regarding the rebuttal process.

Step 3: Compare the actual value of the ISM to the set maximum value under the PMV rule (currently \$324.66). Select the lesser of the two values. Reduce the FBR by this amount.²⁸

When deciding whether to apply the PMV or VTR rule, we also follow the general principle that an applicant or recipient is not subject to the VTR rule when he or she (or at least one member of an eligible couple) designates part or all of his or her contribution toward household operating expenses for food or shelter, and the contribution equals or exceeds the pro rata share of household operating expenses for food or shelter. This is because such applicants or recipients are not receiving both food and shelter from the household in which they reside. In other words, we evaluate ISM under the PMV rule when applicants or recipients contribute their pro rata share of food or shelter to their household operating expenses.²⁹

In January 2022, there were approximately 7,341,000 individuals receiving SSI. Based on our internal data, we estimate that we reduced the payments of 793,000 SSI recipients because of ISM in the same month. Of these 793,000, we estimate that we reduced payments for 358,000 SSI recipients under the VTR rule and that we reduced payments for 434,000 recipients under the PMV rule.³⁰ Of those assessed under the PMV rule, we estimate that 207,000 (48%) successfully rebutted the presumed maximum value (i.e., their payments were reduced less than the PMV rule's set maximum value). In addition, we estimate that the mean ISM amount among all recipients evaluated under the PMV was \$207 and the mean ISM amount among recipients who successfully rebutted

²⁸ If there are other sources of ISM, there are additional calculations. For more examples of ISM computations, please see the section titled, "HOW DOES MY LIVING ARRANGEMENT AFFECT MY SSI BENEFIT AMOUNT?" available at <https://www.ssa.gov/ssi/text-living-ussi.htm>.

²⁹ See POMS SI 00835.170.

³⁰ See Table 1 of our supplemental document titled, "Tables of Administrative Data Related to In-Kind Support and Maintenance (ISM)," available at www.regulations.gov as a supporting document for Docket SSA-2021-0014.

the PMV was \$112. Table 1 summarizes the status of ISM-impacted recipients in January 2022:³¹

	VTR	PMV - maximum amount applies	PMV - lower than the maximum amount
Affected Recipients (count)	358,000	227,000	207,000
Affected Recipients (as percentage of all ISM recipients)	45%	29%	26%
Mean ISM Amount	\$280.33	\$300.33 ³²	\$112

Proposed Change

We propose to update our regulations to exclude food from the calculation of ISM. We also propose to add conforming language to our definition of income explaining that food would be an ISM exception.

Accordingly, we would no longer consider food expenses in our ISM calculations. Instead, we would consider only shelter expenses (i.e., rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services). We would continue to use the VTR or PMV rule to determine the value of the ISM provided. We would apply the VTR rule when applicants or recipients live in another person's household throughout a month and their shelter expenses (rent or mortgage, and utilities) are paid by others living inside the household,³³ and when household operating expenses are paid by a combination of others living inside the household and others living outside the household. Alternatively, we would apply the PMV rule when applicants or recipients live in their own households, and someone

³¹ The FBR for 2022 was \$841 for an individual and \$1,261 for an eligible individual with an eligible spouse. *See* 86 FR 58715, 58717 (2021). When we applied the VTR rule in 2022, we reduced SSI benefits by \$280.33 ($\$841 \times 1/3$) for individuals and \$420.33 ($\$1,261 \times 1/3$) for an eligible individual with an eligible spouse.

³² After the \$20 general income exclusion is applied, if there is no other income, the benefit reduction in 2022 was \$280.33.

³³ Example: If an applicant or recipient lives with a friend and does not pay for his share of the rent or mortgage and utilities, we would apply the VTR rule.

outside the home pays for their shelter costs.³⁴

Our proposal to remove food from ISM calculations could eliminate the benefit reduction that we currently apply to some recipients. This would occur in some cases in which an applicant or recipient allocated a higher proportion of their contribution toward shelter expenses. It could also occur in some cases if an applicant or recipient contributed to their household operating expenses generally. Further, in some circumstances, recipients may choose to reallocate their funds to adjust the amount they contribute toward shelter expenses.

Example: Stan lives in an apartment with a friend, and Stan has rental liability, which means Stan is liable to a landlord for rent. Currently, his household operating expenses are \$1,400 monthly (\$1,000 rent and utilities, and \$400 food). Stan's pro rata share of the household operating expenses is \$700. Stan contributes \$500, specifically for rent. He does not contribute to the household's food expenses, though he consumes the household's food. In this example, during an interview with our technician, the technician informed Stan that they would apply the maximum value under the PMV rule and asked Stan if he intended to rebut the maximum value. Stan rebutted the amount of shelter ISM that he receives, indicating it is less than the maximum value. Under the current rule, we would apply the PMV rule and reduce Stan's monthly SSI benefits by \$200 (the difference between his pro rata share and his contribution). Under the proposed rule, we would exclude food expenses, bringing the total household operating expenses to \$1,000. This would reduce Stan's pro rata share to \$500. If he still contributed \$500 monthly to his household operating expenses, he would meet his

³⁴ Example: If an applicant or recipient lives by herself, but her sister pays her utility bills, we would use the PMV rule to evaluate the help provided by the applicant's or recipient's sister.

pro rata share and we would no longer reduce his benefits because of ISM.

Example: Jane lives in an apartment with her sister, and Jane has rental liability. Currently, their household operating expenses are \$1,200 monthly (\$900 rent and utilities, and \$300 food). Jane's pro rata share of the household operating expenses is \$600. Jane contributes \$500. Currently, we would apply the PMV rule and reduce Jane's monthly SSI benefit by \$100 (the difference between her pro rata share and her actual contribution). Under the proposed rule, we would exclude food expenses, bringing the total household operating expenses to \$900. This would reduce Jane's pro rata share to \$450. If she still contributed \$500 monthly to her household operating expenses, we would no longer reduce her benefits because of ISM.

We expect that some other applicants or recipients—those who do not contribute their full pro rata share even after food expenses would be omitted—may experience a smaller benefit reduction under the proposed policy. This could occur if a higher proportion of an applicant's or recipient's contribution is allotted toward shelter expenses, or if applicants or recipients contribute to their household operating expenses generally and they continue to contribute the same amount toward their household operating expenses even after, as proposed, food is no longer included in household operating expenses. When applicants or recipients pay a larger share of their expenses, they receive less ISM, meaning their benefits may be reduced less.

Example: Mark owns his home, and his parents live with him. Currently, the household operating expenses are \$2,050 monthly (\$1,600 for mortgage and utilities and \$450 for food). Mark's pro rata share of the household operating

expenses would be \$683.33. Mark contributes \$500. Currently, we would apply the PMV rule and reduce Mark's SSI benefit by \$183.33 (the difference between his pro rata share and his actual contribution). Under the proposed rule, we would exclude food expenses, bringing the total household operating expenses down to \$1,600. This would reduce Mark's pro rata share to \$533.33. If he still contributed \$500 monthly to his household operating expenses, we would reduce his benefits by \$33.33 for ISM.

Though we propose to eliminate food expenses from our ISM calculations, we would still consider food expenses for a narrow purpose: to determine whether to use the VTR rule or the PMV rule in certain circumstances. Food expenses would not be included in the actual calculation. We would continue to ask applicants and recipients certain questions about food. These questions are: 1) do you buy food separately from the household? 2) do you eat all meals out? and 3) do you receive Supplemental Nutrition Assistance Program (SNAP) benefits? If applicants or recipients answer "yes" to any of these questions, even if the applicant or recipient lives in another person's household, we would evaluate their ISM using the PMV rule to calculate ISM, and we propose to add this to our regulations.

Summary of VTR Rule and PMV Rule Under Current and Proposed Regulations		
ISM Rule	Current Regulation	Proposed Regulation
VTR Rule	<u>When the Rule Applies</u> We apply when applicants and recipients: <ul style="list-style-type: none"> live throughout a month in another person's household; and receive both food and shelter from others living in the same household. 	<u>When the Rule Would Apply</u> We would apply when applicants and recipients: <ul style="list-style-type: none"> live throughout a month in another person's household; and receive shelter from others living in the same household.

	<u>Amount We Reduce Benefits</u> We reduce by one-third of the applicable FBR.	<u>Amount We Would Reduce Benefits</u> We would reduce by one-third of the applicable FBR (no change).
PMV Rule	<u>When the Rule Applies</u> We apply when the applicant or recipient receives food or shelter but does not meet the conditions of the VTR rule. <u>Amount We Reduce Benefits</u> If applicants or recipients successfully rebut the presumption that the food or shelter provided to them is worth a set maximum value, we determine the actual value of the ISM by subtracting the applicants' or recipients' contribution from their pro rata share of the total household operating expenses (including food expenses). We reduce the applicable FBR by the actual value.	<u>When the Rule Would Apply</u> We would apply when the applicant or recipient receives shelter but does not meet the conditions of the VTR rule (no change). <u>Amount We Would Reduce Benefits</u> If applicants or recipients successfully rebut the presumption that the shelter provided to them is worth a set maximum value, we would determine the actual value of the ISM by subtracting the applicants' or recipients' contribution from their pro rata share of the total household operating expenses (omitting food expenses). We would reduce the applicable FBR by the actual value.

In addition, we propose to update § 416.1131 with clarifying language. Currently, our regulations state that for the VTR rule to apply, an applicant or recipient must receive both food and shelter from the person in whose household they are living. In practice, when determining whether to apply the VTR rule, we consider others in the household as well. We calculate the total household operating expenses and divide by the number of household members to calculate the pro rata share. If the applicant or recipient is paying his or her pro rata share, he or she would be eligible for a full benefit amount, before we take into consideration other factors (e.g., earned or unearned income) unrelated to the ISM policy that might impact the actual benefit amount for which they are eligible. We would clarify this longstanding practice in our regulations.

Finally, we note that this proposal would not change our current rules that cover wages paid in kind (20 CFR 416.1110(a)(3)). Under section 1612(a)(1)(A) of the Act, we

are required to consider food that an individual receives from an employer as wages. 20 CFR 416.1110(a)(3) will remain unchanged to stay consistent with the Act.

Codifying Counting Income Constructively

Independent from removing food from the ISM calculation, we also propose to clarify that income may be received “constructively.” Income is received constructively, unless there are significant restrictions on the applicant’s or recipient’s ability to receive it, if it is under an applicant’s or recipient’s control or an applicant or recipient can use it despite not actually receiving it. Constructive receipt of income is part of our current policy and this change would make it clearer.

Justification for Change

The basic purpose of SSI is to assure a minimum level of income to people who are aged, blind, or disabled and who have limited income and resources. As discussed above, we evaluate many types of income when determining whether someone is eligible under the program. We have historically included in-kind receipt of food in our consideration because food assistance helps people meet their basic needs. However, the complexities of our current food ISM policies may outweigh their utility. The Social Security Advisory Board stated in 2015 that “the complexity of ISM rules contributes to the number of hours that SSA must spend to prevent under and overpayments—and diverts resources from other program integrity activities” The Board also noted that “collecting and verifying information to determine whether there is in-kind support at the application stage is time-consuming and having to continue to make that assessment is burdensome, both for the agency and the SSI recipient who must maintain constant

communication with the agency.”³⁵ Moreover, the current ISM policy may insert barriers into what would otherwise be an innocuous receipt of a meal or food from an individual’s friends or family. The current requirements for reporting in-kind food receipts could discourage SSI applicants and recipients from receiving an often informal but important form of help.

Accordingly, we propose to make the changes outlined for two reasons: to simplify our policy (which will allow for improved application, adjudication, compliance, and comprehension of our rules) and to promote equity by not disadvantaging an already vulnerable population when they receive food assistance. We expect that the proposed rules would provide increased financial security to impacted beneficiaries; provide consistent treatment of food support regardless of source; reduce unduly burdensome reporting requirements; and facilitate improved food security among certain beneficiaries.

Proposal Would Simplify the Policy

The proposed change would simplify SSI policy in several ways. Removing a variable from our ISM calculations would: 1) reduce the amount of program rules an applicant or recipient needs to understand; 2) reduce the amount of information that applicants or recipients must report, both during the application process and in post-award reporting;³⁶ 3) simplify and shorten processing; and 4) lead to fewer benefit recalculations (and therefore, for example, possibly fewer ISM-related overpayments).

The proposed rule follows a change we made to our program in 2005, when we

³⁵ See the Social Security Advisory Board Statement on the Supplemental Security Income Program, “The Complexity of In-Kind Support and Maintenance.” 2015, pgs, 4 and 6, https://www.ssab.gov/wp-content/uploads/2021/03/2015_-SSI_In-Kind_Support___Maintenance.pdf#:~:text=The%20Complexity%20of%20In-Kind%20Support%20and%20Maintenance%20Public,annual%20report%20to%20the%20President%20and%20the%20Congress.

³⁶ Although we refer to the applicant or recipient for ease of reference, if the applicant or recipient has a representative payee, the representative payee would be responsible for reporting the information discussed in this section.

published a final rule removing clothing from the definition of ISM,³⁷ which simplified our policies and improved our work efficiency. Like the 2005 simplification, this proposal would simplify the ISM calculation with respect to a factor for which it is difficult to obtain accurate, verifiable estimates. Like clothing, food is an expense that fluctuates from month to month and may be provided from different sources at different intervals. We anticipate these simplifications will help make our program more equitable for applicants and recipients. We discuss the ways in which this policy is more equitable in the section titled, “Proposal Would Promote Equity.”

1. Reduce the Amount of Program Rules an Applicant or Recipient Needs to Understand

The ISM policy has been cited as one of the most complicated aspects of the SSI program, and applicants and recipients and their representatives have expressed difficulty in understanding and complying with our current ISM rules. As explained by Nicholas (2014), “a substantial portion of the ISM literature criticizes ISM policies for being inequitable, complex, intrusive, and burdensome.”³⁸ Complicated rules can lead to otherwise-eligible individuals’ forgoing applying for benefits or taking on unnecessary burden while navigating application and award processes. We expect that reducing the number of variables may help applicants and recipients and their representatives understand the calculations more easily, which may reduce burden associated with both applying for benefits and maintaining eligibility.

2. Reduce the Amount of Information that Applicants or Recipients Must Report

Under our current regulations, we require applicants or recipients to provide

³⁷ 70 FR 6340 (2005).

³⁸ See Nicholas, Joyce. “Source, Form, and Amount of In-kind Support and Maintenance Received by Supplemental Security Income Applicants and Recipients.” Social Security Bulletin, vol. 74, no. 3, 2014, <https://www.ssa.gov/policy/docs/ssb/v74n3/v74n3p39.html>.

detailed information about their household composition, their household operating expenses, and their contributions toward household operating expenses. We collect this information when applicants apply for benefits and when any of this information changes. The proposed changes would lessen the reporting burden on applicants or recipients by reducing the amount of information applicants or recipients must report. They would no longer need to inform us of their households' food expenses, their contributions to their households' food expenses, or changes to either, except under very limited circumstances. Under the proposal, these circumstances would be limited to changes that could affect whether their ISM is evaluated under the VTR or PMV rule. In other words, applicants or recipients would still inform us if they live in another person's household and if they answer "yes" to any of the following questions: 1) do you buy food separately from the household? 2) do you eat all meals out? and 3) do you receive SNAP benefits?

First, individuals applying for SSI may receive in-kind food support specifically because they lack any reliable source of income and are reliant on non-cash support from friends and family. By reporting this in-kind support on their application, they may receive a reduced benefit due to the ISM policy. However, the receipt of SSI may grant recipients the financial means to start obtaining their own food, and the change in how they obtain their food would need to be reported. The quick succession of having to provide newly updated income information to us imposes reporting and adjudication costs on the recipient and the agency, respectively. Moreover, if the recipient fails to report the reduction in in-kind food support, they may fail to receive the full benefit for which they were eligible. By no longer collecting this information during the application, we also reduce the need for newly awarded beneficiaries to have to provide an updated

report.³⁹

Second, current requirements to report detailed information about household composition, household operating expenses, and contributions toward household operating expenses may present challenges for applicants or recipients. It may be difficult for applicants or recipients to provide accurate estimates of their food expenses and contributions. Actual food purchases may involve varying intervals and multiple household members, vendors, and forms of payment. Further, the applicant's or recipient's estimates are tied to the price of food, which is variable. In fact, one popular measure of inflation excludes the food sector because it is a price category considered excessively volatile.⁴⁰ Changing food prices means that applicants' or recipients' reported food expenses may not accurately reflect their future food expenses. When recipients report food expenses that do not reflect their actual food expenses, they must immediately report the discrepancy to ensure we calculate their benefit amount correctly. Otherwise, they risk an overpayment or underpayment.⁴¹

Removing food from our ISM calculations would also eliminate challenges applicants and recipients experience to verify food expenses and their contributions toward those expenses. To verify food expenses, typically another household member must attest to the estimates provided.⁴² In most cases, there is no other method of expense

³⁹ In 2007, we began redeveloping VTR cases three months after the first payment. During this redevelopment period, the technician determines if recipients should be assessed under the PMV rule based on household contribution or based on a relocation into their household. The data showed that the number of people who transitioned from VTR to PMV within a two-month period was low. For example, of those in pay status in December 2020, only 465 made a transition from VTR to PMV in January or February of 2021. For comparison, we also looked at those in pay in December 2021. Of those in pay status in December 2021, only 285 made the transition in January or February of 2022. We do not anticipate that this proposed rule, if finalized, would change our policy of contacting a recipient, who is receiving ISM under the VTR rule, and redeveloping the claimant's case three months after the first payment.

⁴⁰ See "The trouble with food and energy." The FRED Blog, 29 Feb. 2016, fredblog.stlouisfed.org/2016/02/the-trouble-with-food-and-energy/.

⁴¹ Applicants and recipients are responsible for reporting many factors related to their benefits. While reporting food is just one of many, our proposal would simplify reporting by removing one of the frequently fluctuating variables applicants and recipients must report.

⁴² When SSI applicants or recipients provide information about household expenses, our technicians contact the homeowner or another household member who is knowledgeable of the household expenses for

verification. In contrast, for shelter costs, we can usually obtain verification through an applicant's or recipient's rental or mortgage agreement, tax records, and utility bills. Complying with these requirements can impose burdens on applicants and recipients.

3. Simplify and Shorten Processing

As Balkus et al. noted in a 2008 analysis, we must make a determination concerning ISM receipt for most SSI recipients, but only about 9 percent of SSI recipients have their benefits reduced due to ISM. Further, they noted that “a determination may involve a detailed accounting of household expenses and the individual's contribution, to establish whether the individual pays his or her pro rata share of expenses. In addition to initial claims, this determination must be repeated if there is any change in household composition or expenses that might affect the amount of the SSI benefit.”⁴³

The program complexities associated with administering the ISM policy also fall on our personnel who are responsible for reviewing and adjudicating claims, as well as other front-line personnel responsible for communicating the policy to applicants and recipients. By eliminating food from the ISM calculation and thus simplifying the ISM policy, our personnel would save time associated with training on the current ISM policy and with adjudicating and reviewing claims and post-award reporting changes in in-kind food support when compared to the current ISM policy.

4. Lead to Fewer Benefit Recalculations and Fewer Improper Payments

verification. The contact information for the other knowledgeable household member is provided to us by the applicant or recipient and is also located on the Household Expenses and Contributions page within the SSI Claims System.

⁴³ ISM rules have long been identified as a source of administrative complexity. For more information about administrative complexity related to ISM, see Balkus, Richard; Sears, James; Wilschke, Susan; and Wixon, Bernard. “Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of In-kind Support and Maintenance.” Social Security Bulletin, vol. 68, no. 4, 2008, www.ssa.gov/policy/docs/ssb/v68n4/v68n4p15.html.

When an SSI recipient reports changes related to his or her food expenses or contributions, we must recalculate the recipient's benefit amount based on the updated information.⁴⁴ If we eliminate food from our ISM calculations, recipients will no longer need to report these changes, nor would they be subject to recalculations for these changes. This will save beneficiaries time and reduce the required reporting frequency.

As an example, this could lead to fewer situations in which we determine a beneficiary has been overpaid due to unreported ISM. Similarly, if an overpayment still occurred, it could be lower since we would no longer consider food as part of the ISM calculation. We have noted that the ISM reporting requirement is challenging for beneficiaries to comply with. As Nicholas summarized, "GAO and SSA's Office of the Inspector General have repeatedly declared ISM policy as one of the leading causes of SSI improper payments."⁴⁵ For example, in Fiscal Year (FY) 2018, ISM overpayments totaled \$356 million.⁴⁶ Removing food from the ISM calculation may help reduce overpayments, which can be time- and resource-consuming for both recipients and the agency. We expect simplifying the ISM policy will enhance compliance with SSI rules.

Proposal Would Promote Equity

SSI recipients have low income and resources. Because low-income people disproportionately encounter barriers across a range of social, health, and economic outcomes, our goal is to improve their circumstances, thus improving equity, by

⁴⁴ Under the proposed rules, applicants or recipients would need to contact us if their response to a food question changes because this could affect whether their ISM is evaluated under the VTR or PMV rule. In other words, applicants or recipients would still contact us if they live in another person's household and their answer to any of the following questions changes: 1) do you buy food separately from the household? 2) do you eat all meals out? and 3) do you receive SNAP benefits? See 20 CFR 416.701 through 416.714 for reporting responsibilities.

⁴⁵ See Nicholas, Joyce. "Source, Form, and Amount of In-kind Support and Maintenance Received by Supplemental Security Income Applicants and Recipients." Social Security Bulletin, vol. 74, no. 3, 2014, <https://www.ssa.gov/policy/docs/ssb/v74n3/v74n3p39.html>.

⁴⁶ See pages 188 and 195-196 of our FY 2019 Agency Financial Report available at <https://best.ssa.gov/finance/2019/Payment%20Integrity.pdf>. ISM is also a leading cause of underpayments. For example, ISM underpayments totaled \$246 million in 2018.

removing benefit reductions for this population. As discussed below, we anticipate the policy may facilitate increased food security, which could lead to an overall greater sense of well-being and better health outcomes. As well, the new process would remove a disincentive for family and friends to provide food support, and be generally easier, less burdensome, and potentially less anxiety-provoking. Specifically, this proposed rule would promote equity by: 1) providing increased financial security to affected beneficiaries; 2) providing consistent treatment of food support regardless of source; 3) reducing reporting requirements and the effects of reporting on applicants and recipients; and 4) facilitating improved food security among certain beneficiaries. Removing these obstacles would ultimately promote equity by lessening the disparity between SSI applicants or recipients and others.

1. Providing Increased Financial Security to Affected Beneficiaries

By design, the SSI program serves people who may be facing barriers in various aspects of their lives: individuals with low incomes, including older individuals, families with children, individuals with disabilities, and people who may have been historically underserved. This proposal would benefit disabled, blind, and aged persons who are struggling to meet basic food and shelter expenses, as the 2022 Federal maximum SSI benefit amount (\$10,092/year) is lower than the current Federal poverty level, which is set at \$13,590 for an individual. It removes barriers to food security for persons affected by persistent poverty. Individuals receiving SSI are disproportionately likely to encounter social, economic, and health inequities that are in part compounded by their, on-average, below-poverty level income.⁴⁷ Removing food from the ISM calculation generally would

⁴⁷ Penalizing in-kind assistance from private sources may reduce social equity by discouraging social relationships for vulnerable individuals. For the importance of social relationships to people with disabilities, see Tough, Hannah; Siegrist, Johannes; and Fekete, Christine. 2017. "Social relationships, mental health and wellbeing in physical disability: a systematic review." BMC Public Health 17 (414).

increase the income support to recipients who may have reduced benefits due to the current ISM policy, which in turn generally would provide them additional financial security.

This proposal would also remove a possible disincentive for family and friends to help applicants or recipients obtain food. In a United States Department of Agriculture (USDA) study of households that receive SNAP benefits,⁴⁸ researchers found that, among food coping strategies cited by study participants, a significant minority of the food-secure SNAP households turn to family networks for assistance.⁴⁹ Our proposed rule would ensure that, when applicants or recipients rely on networks of family or friends to help obtain the food they need, we will not reduce their benefits as a result. Under the current PMV rule, when we consider food provided to applicants or recipients, it is offset by dollar-for-dollar reductions in the applicants' or recipients' benefits, up to the set presumed maximum value (currently \$324.66). Because of this offset, in most cases, the help from family or friends does not improve the recipient's ability to meet his or her food needs because this would cause a reduction to the recipient's SSI benefit amount. This creates undesirable effects. For one, because food support generally does not prompt ISM if it comes from charitable or government sources, the current ISM policy could be seen to favor government or charitable sources of food support over support from friends and families. Second, the one-for-one offset means that for SSI applicants and recipients who would otherwise receive food support below the PMV threshold, there may be no

⁴⁸ SNAP is a Federal program that provides nutrition benefits to low-income individuals and families that are used at stores to purchase food. Most SSI recipients receive benefits from SNAP (For example, 62.8 percent of SSI recipients received SNAP in 2013). See Bailey, Michelle and Hemmeter, Jeffrey. "Characteristics of Noninstitutionalized DI an SSI Program Participants, 2013 Update." Research and Statistics Note No. 2015-02. Released September 2015. <https://www.ssa.gov/policy/docs/rsnotes/rsn2015-02.html>. The average monthly SNAP benefit was about \$155 per person in 2020. See Supplemental Nutrition Assistance Program, Aug. 6, 2021, available at <https://fns-prod.azureedge.net/sites/default/files/resource-files/34SNAPmonthly-8.pdf> <https://fns-prod.azureedge.net/sites/default/files/resource-files/SNAPsummary-11.pdf>.

⁴⁹ See U.S. Department of Agriculture. SNAP Food Security In-Depth Interview Study (2013) at <https://fns-prod.azureedge.net/sites/default/files/SNAPFoodSec.pdf>, p xiii. While this study focused on SNAP participants, not specifically SSI recipients receiving SNAP, there is some overlap. Some households in the study received SSI. See pg. 7.

incentive to receive said support.

By removing food from ISM calculations, we would remove a consideration that recipients could view as discouraging establishing and maintaining these vital forms of familial, social, and community support that can be a critical, if informal, support structure. Encouraging these support networks for beneficiaries currently receiving SSI may also facilitate additional resiliency for individuals even if they stopped receiving benefits in the future.

Example: Sheila lives alone and normally purchases her own food, but she is having trouble meeting her monthly food expenses. Her daughter wants to help her with her food expenses and buys Sheila \$100 of groceries each month. Under current regulations, Sheila would contact us to report the ISM her daughter is providing (\$100 of groceries each month). We would then reduce Sheila's monthly SSI benefit by \$100. Ultimately, Sheila would receive the same amount of assistance each month because without her daughter's help, Sheila's benefits would not be reduced by \$100. She would receive no net benefit from receiving \$100 in groceries (and would have to spend time reporting the receipt of groceries).

2. Providing Consistent Treatment of Food Support Regardless of Source

This proposed rule would also allow us to treat food assistance uniformly, regardless of the source. Under current rules, as explained above, we apply our ISM rules to determine if we need to reduce recipients' benefits because of the food assistance they receive from private sources, like family and friends. However, we do not reduce a recipient's benefits for the food assistance they receive from public sources, such as SNAP. In other words, public sources of food assistance are not counted as ISM under

current rules. Therefore, excluding food from the calculation of ISM would ensure that food assistance from public and private sources are treated uniformly (i.e., both excluded) under ISM rules. Removing this inconsistency would decrease the complexity of our program.

3. Reducing Reporting Requirements and the Effects of Reporting on Applicants and Recipients

As previously discussed in our justifications focused on the time- and cost-savings associated with simplifying the ISM policy, the challenges associated with understanding and complying with ISM requirements likely compound existing inequities for SSI recipients. Manasi Deshpande and Yue Li provide a detailed overview of contemporary research related to how these challenges can disproportionately lead to underutilization of critical services and programs by those most in need.⁵⁰ Other behavioral science research has shown that burdens like the complicated food-support ISM reporting requirements can have negative effects for individuals already facing scarcity, as is the case for many SSI recipients.⁵¹

Relatedly, current ISM policy requires that SSI recipients report simple acts of charity or support from friends or family, and beneficiaries may be improperly paid if they fail to report these events in a timely manner. Because the SSI program may be perceived as complicated and burdensome, there may be a psychological cost such as anxiety or stress related to reporting food. This could lead to individuals' not wanting to apply or failing to comply with the requirements for maintaining their SSI benefits. By treating the sharing and provision of food, a common human generosity, as something

⁵⁰ Deshpande, Manasi, & Li, Yue. (2019). Who is screened out? Application costs and the targeting of disability programs. *American Economic Journal: Economic Policy*, 11(4), 213-48.

⁵¹ Mullainathan, S. & Shafr, E. (2013.) *Scarcity: Why having so little means so much*. Henry Holt and Company.

that must be reported, it is possible some beneficiaries may experience frustration, anxiety, or discomfort that in turn may reduce SSI participation (or may result in current recipients' failing to report in-kind food support). Questioning individuals about items as personal as a household's food purchases may be seen as overly intrusive without achieving a substantial program goal. This proposal has the potential to make our rules less intrusive and better protect beneficiaries' privacy and dignity while continuing to meet the requirements of the program.

5. Facilitating Improved Food Security Among Certain Beneficiaries

This proposal would remove benefit reductions that applicants or recipients may incur when they receive help obtaining food from family or friends. By removing benefit reductions, we may remove a barrier to food security for individuals with low incomes. Food insecurity is defined as "limited or uncertain availability of nutritionally adequate and safe foods, or limited or uncertain ability to acquire acceptable foods in socially acceptable ways."⁵² Food insecurity is often associated with poor health. For example, after certain risk factors were controlled, studies found that "food-insecure children are at least twice as likely to report being in fair or poor health and at least 1.4 times more likely to have asthma, compared to food-secure children; and food-insecure seniors have limitations in activities of daily living comparable to those of food-secure seniors fourteen years older."⁵³ By implementing the policy, we will potentially increase food

⁵² See "Measurement." USDA Economic Research Service, www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/measurement.aspx#insecurity.

⁵³ See Gundersen, Craig; Ziliak, James. "Food Insecurity and Health Outcomes" *Health Affairs*, vol. 34, no. 11, Nov. 2015, www.healthaffairs.org/doi/full/10.1377/hlthaff.2015.0645. In addition, "even short-term food insecurity can have significant impacts on children's health, including poorer behavioral, emotional, and nutritional outcomes. Among children, food insecurity has been linked to increased risk of obesity." See Metallinos-Katsaras, Elizabeth; Must, Aviva; Gorman, Kathleen. "A longitudinal study of food insecurity on obesity in preschool children." *Journal of the Academy of Nutrition and Dietetics*, Dec. 2012, pubmed.ncbi.nlm.nih.gov/23174682/, doi: 10.1016/j.jand.2012.08.031. As another example, a study found that in a national sample of older adults, there was "an inverse association between food insecurity and cognitive function." See Frith, Emily; Loprinzi, Paul. "Food insecurity and cognitive function in older adults: Brief Report." *Clinical Nutrition*, vol 37, no. 5, pp. 1765-1768, <https://doi.org/10.1016/j.clnu.2017.07.001>.

security for some SSI recipients, which may alleviate some of the ill-effects of food insecurity.

Research shows that food insecurity rates are often higher than average for people facing certain barriers. The USDA's Economic Research Service published 2019 rates of food insecurity that were more than two and a half times higher for households with incomes below 185 percent of the poverty threshold than for the national household average (27.6 percent vs. 10.5 percent).⁵⁴ Further, a 2019 article noted findings suggesting that households with a disabled adult are "disproportionately food insecure," and that "disabilities are associated with food insecurity through multiple pathways."⁵⁵ We do not know to what extent this rule will result in increased food security alongside other more prominent benefits, such as reduced burden associated with less reporting required by claimants. However, we intend for it to have an impact in this area. SSI applicants and recipients are a population likely to face challenges in food security. By removing food from the ISM calculation, we are removing obstacles to obtaining food that could help ease the burden of rising food costs for some recipients.

Justification for Retaining Food-Related Questions

As explained above, we would still ask certain food-related questions for the narrow purpose of determining whether to use the PMV or VTR rule to assess ISM, and we would make this clear in our regulations. Using food expenses for this narrow purpose is a significant simplification of our current policies for the reasons provided above. Applicants or recipients would need only to answer three questions related to food

⁵⁴ See "Key Statistics & Graphics." USDA Economic Research Service, www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/key-statistics-graphics.

⁵⁵ Heflin, Colleen; Altman, Colleen; Rodriguez, Laura. "Food insecurity and disability in the United States." *Disability and Health Journal*, vol. 12, no. 2, 2019, pages 220-226, ISSN 1936-6574, <https://doi.org/10.1016/j.dhjo.2018.09.006>. Also, according to the USDA Economic Research Service, disability is an important risk factor for food insecurity. See Coleman-Jensen, Alisha; Nord, Mark. "Disability is an Important Risk Factor for Food Insecurity." 6 May 2013, www.ers.usda.gov/amber-waves/2013/may/disability-is-an-important-risk-factor-for-food-insecurity.

expenses with a “yes” or “no”; they would not need to provide dollar amounts.⁵⁶

Similarly, this consideration would allow us to remain consistent with our current policy of when we evaluate applicants or recipients under the PMV rule. If we did not continue to consider food for this narrow purpose, some applicants or recipients who currently have their ISM evaluated under the PMV rule would be required to have their ISM evaluated under the VTR rule, which might be disadvantageous for them. Based on administrative data of recipients’ current living arrangements as of May 19, 2022, we found the following: 12,977 recipients earmark their household operating expenses contributions for both food and shelter; 3,427 earmark for food only; 39,412 recipients report that they “eat all meals out;” and 889,651 recipients report that they “buy food separately.”⁵⁷ This data comes from the SSI Claims System, which includes all recipients receiving SSI as of May 19, 2022. While some of these recipients may no longer face an ISM reduction at all under our proposal because they exclusively receive food support and do not receive any shelter support (see, for example, our previous example with “Larry”), many of these recipients are in in-kind support situations similar to our example with “Michael.” However, unlike in our example with “Michael,” which discusses rebutting the PMV under our current rules, if Michael were no longer able to earmark expenses for food, and we did not continue to ask these food questions, the VTR rule would apply. We do not have precise estimates of how much the average increase in ISM reductions would be in such situations.

As discussed in greater detail in the E.O. 12866 section below, in addition to ensuring that our proposal to remove food from the ISM calculation does not

⁵⁶ These questions are: 1) do you buy food separately from the household? 2) do you eat all meals out? and 3) do you receive SNAP payments? If applicants or recipients answer “yes” to any of these questions, we will evaluate their ISM using the PMV rule. Food expenses would not be included in the calculation.

⁵⁷ See Tables 2 and 3 of our supplemental document titled, “Tables of Administrative Data Related to In-Kind Support and Maintenance (ISM),” available at www.regulations.gov as a supporting document for Docket SSA-2021-0014.

inadvertently disadvantage individuals to whom the PMV rule currently applies, retaining these food-related questions would also result in our applying the PMV rule to certain individuals who are currently evaluated under the VTR rule. In our case study, we found that roughly one-third (i.e., 122 of 353) of recipients currently evaluated under VTR would instead be evaluated under PMV. Of those 122 cases, 46 would receive more-favorable treatment under our proposal. We assumed that they would successfully rebut the PMV, and these 46 cases on average would see an increase of \$166 in Federal SSI payments in 2023 relative to current rules. We assumed that another 51 cases would not successfully rebut the PMV and have no change in SSI payment, because they have no other income. In the remaining 25 cases, however, we assumed that the PMV would not be rebutted and that the recipient has other income of at least \$20, which would result in these recipients' experiencing a \$20 decrease in monthly Federal SSI payments relative to current rules (because PMV reductions are subject to one-third of the FBR plus the \$20 general income exclusion).

While we recognize that some applicants and recipients may not benefit from our proposed changes, we believe that retaining the three food questions is necessary to ensure that individuals who currently have the PMV rule applied to them, and thus have the ability to rebut the PMV, continue to have the PMV rule applied to them where appropriate. As discussed in the solicitation for comments, we welcome comments on alternative ways to achieve our stated goals related to retaining these food questions, including advancing equity and simplifying the program.

Clarifications to Our Definition of Income

When we remove food from the calculation of ISM, we would make that clear in our general definition of income. This change would ensure consistency among our regulations. Separate from the removal of food from the calculation of ISM, we would

use this opportunity to clarify that income may be received constructively. Constructive receipt of income is part of our current policy, and this change would make the definition of income clearer.

Explanation of Changes

We propose to revise our ISM regulations to make clear in 20 CFR 416.1130 that we have removed food from the calculation of ISM. We would also revise the general definition of income in 20 CFR 416.1102 accordingly, and we would take the opportunity to clarify in the general definition of income that income may be constructively received. We would also make minor revisions to several other regulatory sections to conform and align with these updates. These other sections include 20 CFR 416.1103, 416.1104, 416.1121, 416.1131, 416.1132, 416.1133, 416.1140, 416.1147, 416.1148, and 416.1149.

Solicitation for Public Comment:

As discussed elsewhere in this rulemaking, we are seeking public comment on this proposed rule. Questions the public may wish to consider when evaluating this proposed rule:

- Are there additional aspects of the ISM policy that we could simplify under current statutory authorities? What would be the effects of doing so?
- Are there any other policies that are related to ISM that we should consider in the context of this proposed rulemaking?
- Do you have additional information that relates to or otherwise informs our description of the applicant or recipient experience under current ISM policies?
- Are there forms or other information collections that we have not noted that would or should require modification as a result of this proposed policy change?
- Are there other information collection improvements that could further reduce

respondent burden, either under the current ISM policy or under the policy proposed in this rule?

- Is there data or research related to equity and the SSI population (or, more generally, low-income or disabled populations) that could also be used to inform the final rule?
- Is there data or research related to administrative burden and the SSI population (or, more generally, low-income or disabled populations) that could also be used to inform the final rule?
- Do you have any additional justifications for, or arguments against, this proposed rule?
- Are there other methods we could use to measure the time-savings associated with this proposed rule? Are there other methods of the value of time we could use to measure the opportunity costs associated with this policy?
- If you have had experience with the rebuttal process:
 - Are applicants and recipients to whom the PMV rule applies typically able to comprehend the requirements associated with rebuttal? Are there terminological or other plain-language improvements we could make to the rebuttal process to improve clarity or reduce burden on applicants and recipients?
 - Does the “Rebuttal Rights Notification” (included in the docket for this rulemaking) clearly communicate the purpose of and requirements for rebutting the PMV? Are there ways we could improve how this information is communicated?
 - Are there any regulatory, sub-regulatory, paperwork, or process improvements we could make to the PMV rebuttal process to reduce respondent burden or otherwise increase successful submission of rebuttal

evidence?

Rulemaking Analyses and Notices

We will consider all comments we receive on or before the close of business on the comment closing date indicated above. The comments will be available for examination in the rulemaking docket for these rules at the above address. We will file comments received after the comment closing date in the docket and may consider those comments to the extent practicable. However, we will not respond specifically to untimely comments. We may publish a final rule at any time after close of the comment period.

Clarity of This Rule

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make the rule easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, e.g., grouping and order of sections, use of headings, paragraphing?

When Will We Start To Use This Rule?

We will not use this rule until we evaluate public comments and publish a final rule in the *Federal Register*. All final rules include an effective date. We will continue to use our current rules until that date. If we publish a final rule, we will include a summary of those relevant comments we received along with responses and an explanation of how we will apply the new rule.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this rule meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed it.

Anticipated Transfers to Our Program

The primary anticipated impact of this rule is a small increase in monetary transfers from the government to SSI recipients. To estimate this, our Office of the Chief Actuary (OCACT) took a sample of 0.1% of all SSI recipients who are impacted by the current ISM policy—a total sample of 764 recipients. Based on the best available data, OCACT estimated that implementation of these proposed rules for all eligibility and payment determinations effective April 1, 2023, and later will result in an increase in Federal SSI payments of a total of about \$1.5 billion over the period of fiscal years 2023 through 2032. This represents an increase in Federal SSI payments of 0.2%.

Of the 764 cases in our sample:

1) (PMV to PMV) We estimate that 411 cases (54%) are individuals who are currently evaluated under PMV and would continue to be evaluated under PMV. As discussed in the preamble, there are multiple types of living arrangements that result in assessment under the PMV rule, including (1) individuals who live in another person's household and receive either food or shelter support, but not both; and (2) individuals who live in their own household and who receive in-kind shelter or food support, or both. In each of these PMV scenarios, some recipients currently receive the PMV reduction, currently \$324.66 (after the general income exclusion is applied, if there is no other income, the current reduction is \$304.66—the same as the VTR), while others rebut the PMV and have their Federal SSI payment reduced by a smaller amount. We estimate that of these 411 cases, 42 would have an increase in the monthly SSI payment as a result of this proposed rule. Of these 42 individuals, we estimate that 24 recipients would have no PMV reduction and that the other 18 recipients would have a lesser PMV reduction. We estimate that the average increase in the monthly Federal SSI payment among those 42 cases would be \$91 in 2023. We estimate that roughly 10% of all PMV-impacted recipients, or roughly 43 thousand, (5% of the total population of ISM-impacted recipients), will see an increase in their Federal SSI payment as a result of this aspect of the rule.

In our review of these cases, we did not examine which types of the above-described living arrangements would see changes due to the proposed rule. There are three main groups of individuals who could see this type of change: 1) Individuals who live in someone else's home and receive only food support because they earmark their contribution to household shelter expenses. These individuals would not be considered to be receiving countable ISM under the proposed rule as long as their contribution to shelter expenses meets their pro rata

share. 2) Individuals who live in someone else's home and receive only shelter support, because they earmark their contribution to household food expenses. These individuals might see their ISM decrease to zero dollars if they no longer need support and are able to contribute to their household expenses that cover their pro rata share. 3) Individuals who live in their own household and receive both food and shelter support. These individuals would see a decrease in their ISM amount, if their countable ISM falls below the PMV and they choose to rebut.

- 2) (VTR to VTR) We estimate that 231 cases (30%) are individuals who are currently evaluated under VTR and would continue to be evaluated under VTR. These are recipients who under current rules live throughout a month in another person's household and receive both food and shelter support from others living in the household, and under the proposed rules live throughout a month in another person's household and receive shelter support from others living in the household. Where the VTR rule applied under current policy and would apply under the proposed policy, there would be no change in ISM as a result of the proposed rule.
- 3) (VTR to PMV) We estimate that 122 cases (16%) are individuals who are currently evaluated under VTR and would be evaluated under PMV under proposed rules. These are individuals who live in another person's household and receive in-kind shelter support, but who we anticipate will indicate they consume all their food separately, by asserting that they buy food separately from the household, that they eat all meals out, or that they receive Supplemental Nutrition Assistance Program (SNAP) benefits. We estimate that 46 of these individuals

would have an increase in their monthly SSI payment. On average we estimate that the increase in the monthly SSI payment would be \$166 in 2023. Of these 46 individuals, we estimate that 11 would have no PMV reduction and that 35 would be charged less than the maximum amount. We estimate that roughly 6% of all ISM-impacted recipients, or roughly 48 thousand recipients, will see an increase in their payment as a result of this aspect of the rule. We estimate that another 51 individuals who would shift from VTR to PMV would not successfully rebut the PMV and would have no change in payment due to the proposed rule because they have no other income. We estimate that roughly 7% or 52 thousand ISM-impacted recipients would see no change in payment as a result of this aspect of the rule. By contrast, the other 25 individuals who would shift from VTR to PMV would not successfully rebut the PMV and would have other income. In these instances, recipients would experience a \$20 reduction in their monthly Federal SSI payment. This is because under current rules they receive the VTR ISM reduction, which is one-third of the Federal benefit rate (currently \$304.66), whereas under the proposed rule these recipients would receive the PMV ISM reduction, which is one-third of the Federal benefit rate plus the amount of the general income exclusion (currently \$20) for a total Federal payment reduction for an individual of \$324.66. When a recipient does not have other income, the \$20 general income exclusion reduces the countable ISM amount. However, when a recipient has other income totaling at least \$20, the \$20 general exclusion is already used to reduce that income, and the payment is thus reduced by the full PMV amount when the PMV is not successfully rebutted. We estimate that roughly 3% of all ISM-impacted recipients, or roughly 26 thousand, will see a decrease in their Federal SSI payment as a result of this aspect of the rule.

Therefore, of the 764 cases in our sample, we estimate that 88 total cases (12% of those

affected by current ISM rules and 1% of all Federal SSI recipients) would have an increase in monthly SSI payments. 25 total cases (3% of ISM-impacted recipients, less than 1% of all Federal SSI recipients) would have a decrease in monthly Federal SSI payments. We estimate that the average increase in the monthly Federal SSI payment would be \$131 in 2023 for recipients experiencing an increase, and that the average Federal SSI payment reduction would be \$20 for recipients experiencing a decrease. The table below provides a summarization of the case study.

Current Rules	Proposed Rules	Impact	Count	Percentage	Average Change in Monthly Payments in 2023	Extrapolation to all ISM Recipients (in thousands)	Aggregate Change in Monthly Payments in 2023
PMV	PMV	No change in payment	369	48%	-	383	-
PMV	PMV	Increase in payment	18	2%	\$105	19	\$1,889
PMV	No ISM	Increase in payment	24	3%	\$81	24	\$1,934
VTR	VTR	No change in payment	231	30%	-	240	-
VTR	PMV	Increase in payment	46	6%	\$166	48	\$7,658
VTR	PMV	No change in payment	51	7%	-	52	-
VTR	PMV	Reduction in payment	25	3%	(\$20)	26	(\$500)

Anticipated Administrative Cost-Savings to the Social Security Administration

The Office of Budget, Finance, and Management estimates that this proposal will result in net administrative savings of \$25 million for the 10-year period from FY 2023 to FY 2032. The net administrative savings is mainly a result of unit time savings as field office employees will not have to spend time explaining and developing food as part of ISM during initial claims, pre-effectuations reviews, redeterminations, and post-eligibility actions. The savings are offset by costs to update our systems to remove food from the ISM calculation, costs to send notices to inform current recipients of the policy changes, costs to address inquiries from the notices, and costs as a result of more individuals' being eligible for SSI benefits, which increases claims, reconsiderations, appeals, CDRs, redeterminations, and post-eligibility actions.

Anticipated Time-Savings and Qualitative Benefits

We anticipate qualitative benefits from this proposal because, if implemented, it would simplify our policy and make the SSI claims process easier for applicants and recipients. The public benefits from simplifications to our program because it may take less time and effort to understand our program and its requirements, and may make it easier to comply with the program's requirements. Also, because SSI applicants and recipients would not need to report as much information related to food expenses, they may save time that they otherwise would have spent gathering information and contacting us to report this information. As discussed in the Paperwork Reduction Act (PRA) section below, we estimate the time savings just on the SSI Application forms to be 1 minute per response. This represents an annual burden reduction of 95,668 hours. We estimate that these time-savings will result in cost-savings of \$1,691,311 for the first year, and an estimated cost-savings of \$16,913,110 over a 10-year period (we developed this figure by approximating the "opportunity cost" for the respondents, which varies per form).

However, we anticipate that the time-savings on the SSI application are only a limited component of the overall time-savings to the public. By eliminating the need to report food support, recipients will no longer need to report changes across the course of their receipt of SSI. Additionally, reporting food support, whether on the initial application or at a later point during post-award eligibility, oftentimes requires us to develop further, which may require completion of a variety of information collections and forms, to include SSA-8006-F4 (Statement of Living Arrangements, In-Kind Support and Maintenance); SSA-8011-F3 Statement of Household Expenses and Contributions); SSA-8000 (Application for Supplemental Security Income (SSI); SSA 8202-BK (Statement for Determining Continuing Eligibility for Supplemental Security Income Payment); SSA-8203-BK (Statement for Determining Continuing Eligibility for

Supplemental Security Income Payment; SSA-5062 (Claimant Statement about Loan of Food or Shelter); SSA-L5063-F3 (Statement about Food or Shelter Provided to Another). As discussed in the PRA section, we estimate that this proposed change would not result in fewer forms completed. However, with a time savings of one minute per response, we estimate an overall time savings of 95,668 hours. Time savings in completing these forms not only benefits the recipient; we often must develop this information from third parties, whose time will also be saved through this proposal. While we do not maintain administrative data on the volume of post-award information collections pertaining to food-support reporting, we anticipate administrative time savings.

In many situations recipients fail to report receiving food in a timely manner. This requires us to redevelop this issue after a recipient's monthly benefit amount has been paid. This, in turn, may create an overpayment, which would require us to develop the issue further and contact the recipient for an interview. As discussed in the preamble, we expect that simplifying the ISM policy will reduce improper payments. The overpayment recovery process can, at times, be a time-intensive process to navigate, particularly for beneficiaries seeking to have their overpayment waived or reconsidered. While we have not quantified the amount of time beneficiaries spend working to resolve overpayments related to food ISM, we anticipate that this proposal would result in time savings associated with reduced improper payments.

Further, as discussed in the preamble, there are potential qualitative benefits to the proposal such as reduced food insecurity, enhanced social support networks, reduced frustration and anxiety among the beneficiary population associated with understanding and complying with complicated food-support ISM policies, potentially enhanced dignity with elimination of the need to report receipt of food to the government (which may appear intrusive to some applicants and recipients), and more consistent and equitable treatment of beneficiaries' various sources of food assistance.

Anticipated Costs

Outside of transfers, we do not anticipate more than *de minimis* costs associated with this rulemaking. Since this regulation would reduce reporting requirements and simplify the evaluation process for adjudicators, there are no costs in those areas. The SSI ISM policy is complex by nature, and sometimes those complexities make it difficult for the public to understand and follow the rules of the program. Better understanding of SSI program rules may occur over time. We do not anticipate that this proposal would affect labor market participation in any significant way, in part because of the limited understanding of the current policy in the beneficiary community that has been noted by some, including the SSAB.⁵⁸

Executive Order 13132 (Federalism)

We analyzed this proposed rule in accordance with the principles and criteria established by Executive Order 13132 and determined that the proposed rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that this proposed rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on

⁵⁸ See the Social Security Advisory Board Statement on the Supplemental Security Income Program, “The Complexity of In-Kind Support and Maintenance.” 2015, https://www.ssab.gov/wp-content/uploads/2021/03/2015_-SSI_In-Kind_Support_Maintenance.pdf#:~:text=The%20Complexity%20of%20In-Kind%20Support%20and%20Maintenance%20Public,annual%20report%20to%20the%20President%20and%20the%20Congress.

a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This final rule will require minor changes to the following forms:

1. SSA-8000-BK (OMB No. 0960-0229), Application for Supplemental Security Income;
2. SSA-8006 (OMB No. 0960-0174), Statement of Living Arrangements, In-Kind Support and Maintenance;
3. SSA-8011 (OMB No. 0960-0456), Statement of Household Expenses and Contributions;
4. SSA-5062 & SSA-L5063 (OMB No. 0960-0529), Claimant Statement about Loan of Food or Shelter and Statement about Food or Shelter Provided to Another;
5. SSA-8202-BK (OMB No. 0960-0145), Statement for Determining Continuing Eligibility for Supplemental Security Income Payment; and
6. SSA-8203-BK (OMB No. 0960-0416), Statement for Determining Continuing Eligibility for Supplemental Security Income Payment.

The form changes will result in a burden reduction of one minute per response per affected form, resulting in a 95,668-hour total burden savings. This figure represents the difference between the previous and new total estimated annual burden. See below for details of the burden calculations.

Below are charts showing the revised burden estimates, to be effective when we finalize the rule.

1) SSA-8000-BK (0960-0229):

Modality of Completion	Number of Respondents (annually)	Frequency of Response	Average Burden Per Response (minutes)	Estimated Total Annual Burden (hours)	Average Theoretical Hourly Cost Amount (dollars)*	Average Wait Time in Field Office or for Teleservice Centers (minutes) **	Total Annual Opportunity Cost (dollars)***
SSI Claim System	1,646,520	1	34	933,028	\$19.86*	21**	\$29,974,897***
SSA-8000-BK (Paper Form)	705	1	39	458	\$19.86*	21**	\$14,001***
Totals	1,647,225			933,486			\$29,988,898***

* We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (<https://www.ssa.gov/legislation/2022factsheet.pdf>), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on averaging both the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. **There is no actual charge to respondents to complete the application.**

2) SSA-8006 (0960-0174):

Modality of Completion	Number of Respondents	Frequency of Response	Average Burden per Response (minutes)	Estimated Total Annual Burden (hours)	Average Theoretical Hourly Cost Amount (dollars)*	Average Wait Time in Field Office or Telephone Wait Time (minutes) **	Total Annual Opportunity Cost (dollars)***
SSI Claims	109,436	1	6	10,944	\$11.70*	21**	\$576,190***

System							
SSA-8006 (Paper Form)	12,160	1	6	1,216	\$11.70*	21**	\$64,022***
Totals	121,595			12,160			\$640,212***

* We based this figure on the average DI payments based on SSA's current FY 2022 data

(<https://www.ssa.gov/legislation/2022factsheet.pdf>).

** We based this figure on averaging both the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. **There is no actual charge to respondents to complete the application.**

3) SSA-8011 (0960-0456):

Modality of Completion	Number of Respondents	Frequency of Response	Average Burden Per Response (minutes)	Estimated Total Annual Burden (hours)	Average Theoretical Hourly Cost Amount (dollars)*	Average Wait Time in Field Office or for Teleservice Centers (minutes) **	Total Annual Opportunity Cost (dollars)***
SSI Claims System	398,759	1	14	93,044	\$28.01*	21**	\$6,515,406***
SSA-8011 (Paper Form)	21,000	1	14	4,900	\$28.01*	21**	\$343,123***
Totals	419,759			97,944			\$6,858,529***

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on averaging both the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. **There is no actual charge to respondents to complete the application.**

4) SSA-5062 & SSA-L5063 (0960-0529):

Modality of Completion	Number of Respondents	Frequency of Response	Average Burden Per Response (minutes)	Estimated Total Annual Burden (hours)	Average Theoretical Hourly Cost Annual (dollars)*	Average Wait Time in Field Office or for Teleservice Centers (minutes) **	Total Annual Opportunity Cost (dollars)***
SSA-5062 (SSI Claims System)	29,026	1	19	9,192	\$19.86*	21**	\$384,311***
SSA-L5063 (SSI Claims System)	29,026	1	19	9,192	\$19.86*	21**	\$384,311***
SSA-5062 (Paper Form)	29,026	1	29	14,029	\$19.86*	21**	\$480,374***
SSA-L5063 (Paper Form)	29,026	1	29	14,029	\$19.86*	21**	\$480,374***
Total	116,104			46,442			\$1,729,370***

* We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (<https://www.ssa.gov/legislation/2022factsheet.pdf>), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on averaging both the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. **There is no actual charge to respondents to complete the application.**

5) SSA-8202-BK (0960-0145):

Modality of Completion	Number of Respondents	Frequency of Response	Average Burden Per Response (minutes)	Estimated Total Annual Burden (hours)	Average Theoretical Hourly Cost Annual (dollars)*	Average Wait Time in Field Office or for Teleservice Centers (minutes) **	Total Annual Opportunity Cost (dollars)***
SSI Claims System	1,764,207	1	19	558,666	\$11.70*	21**	\$13,760,815* **
SSA-8202-BK (Paper Form)	67,698	1	20	22,566	\$11.70*	21**	\$541,242***
Totals	1,831,905			581,232			\$14,302,057* **

* We based this figure on the average DI payments based on SSA's current FY 2022 data (<https://www.ssa.gov/legislation/2022factsheet.pdf>).

** We based this figure on averaging both the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. **There is no actual charge to respondents to complete the application.**

6) SSA-8203-BK (0960-0416):

Modality of Completion	Number of Respondents	Frequency of Response	Average Burden Per Response (minutes)	Estimated Total Annual Burden (hours)	Average Theoretical Hourly Cost Annual (dollars)*	Average Wait Time in Field Office or for Teleservice Centers (minutes) **	Total Annual Opportunity Cost (dollars)***
SSI Claims System	1,468,220	1	18	440,466	\$19.86*	21**	\$18,953,252***
SSA-8203-BK (Paper Form)	135,357	1	19	42,863	\$19.86*	21**	\$1,792,127***
Totals	1,603,577			483,329			\$20,745,379***

* We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (<https://www.ssa.gov/legislation/2022factsheet.pdf>), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on averaging both the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. **There is**

no actual charge to respondents to complete the application.

We calculated the aggregate burden saving associated with this proposed rule as follows:
2,250,261 (total current reporting burden across all six information collections) – 2,154,593
(total reporting burden across all six information collections reflecting a 1minute burden
reduction due to implementation of this rule) = 95,668 burden hours saved.

SSA is submitting an Information Collection Request for clearance to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget

Attn: Desk Officer for SSA

Fax Number: 202-395-6974

E-mail address: OIRA_Submission@omb.eop.gov

Social Security Administration, OLCA

Attn: Reports Clearance Director

3100 West High Rise

6401 Security Blvd.

Baltimore, MD 21235

Fax: 410-966-2830

Email address: OR.Reports.Clearance@ssa.gov

You can submit comments until [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**], which is 30 days after the publication of this notice. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

(Catalog of Federal Domestic Assistance Program Nos. 9601, 96.006 Supplemental Security Income)

List of Subjects

20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

The Acting Commissioner of Social Security, Kilolo Kijakazi, Ph.D., M.S.W., having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the Federal Register.

Faye I. Lipsky,
Federal Register Liaison,
Office of Legislation and Congressional Affairs,
Social Security Administration.

For the reasons stated in the preamble, we propose to amend 20 CFR chapter III, part 416, as set forth below:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND,
AND DISABLED

Subpart K—Income

1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93-66, 87 Stat. 154 (42 U.S.C. 1382 note).

2. Amend § 416.1102 by revising to read as follows:

§ 416.1102 What is income?

Income is anything that you receive in cash or in kind that you can use to meet your needs for food or shelter. For purposes of this definition, income may be received “actually” or “constructively.” Income is received constructively, unless there are significant restrictions on your ability to receive it, if it is under your control or you can use it despite not actually receiving it. Sometimes income also includes more or less than you actually receive (see § 416.1110 and § 416.1123(b)). In-kind income is not cash but is something else that you can use to meet your needs for food or shelter. Exception: Food is not included in the calculation of in-kind support and maintenance, which is a type of unearned income that we have special rules for valuing (see §§ 416.1130 through 416.1148).

3. Amend § 416.1103 by revising paragraphs (a)(4), (b)(2), the example in paragraph (g) and paragraph (j) to read as follows:

§ 416.1103 What is not income?

(a) * * *

(4) In-kind assistance (except shelter) provided under a nongovernmental

program whose purpose is to provide medical care or medical services;

* * *

(b) * * *

(2) In-kind assistance (except shelter) provided under a nongovernmental program whose purpose is to provide social services; or * * *

* * * * *

(g) * * *

Examples: If your daughter uses her own money to pay your mortgage payment directly to the mortgage lender, the payment itself is not your income because you do not receive it. However, because of your daughter's payment, the transaction provides you with shelter; the mortgage payment is in-kind income for shelter to you. Similarly, if you book a hotel room on credit and your son later pays the bill, the payment to the hotel is not income to you, but the payment of the bill is in-kind income for shelter to you. In this example, if your son pays for the hotel bill in a month after the month of the hotel stay, we will count the in-kind income to you in the month in which he pays the bill. On the other hand, if your brother pays a lawn service to mow your grass, the payment is not income to you because the mowing cannot be used to meet your needs for food or shelter. Therefore, the payment for the lawn service is not in-kind income as defined in § 416.1102.

* * * * *

(j) *Receipt of certain noncash items.* Any item you receive (except shelter as defined in §416.1130) which would be an excluded nonliquid resource (as described in subpart L of this part) if you kept it, is not income.

Example 1: A community takes up a collection to buy you a specially equipped van, which is your only vehicle. The value of this gift is not income because the van does not provide you with food or shelter and will become an excluded nonliquid resource under §

416.1218 in the month following the month of receipt.

Example 2: You inherit a house which is your principal place of residence. The value of this inheritance is income because the house provides you with shelter and shelter is income. However, we value the house under the rule in § 416.1140.

4. Amend § 416.1104 by revising the fourth sentence and removing the fifth sentence in the paragraph to read as follows:

§ 416.1104 Income we count.

* * * One type of unearned income is in-kind support and maintenance (shelter), which we value depending on your living arrangement.

* * *

5. Amend § 416.1121 by revising paragraph (h) to read as follows:

§ 416.1121 Types of unearned income.

* * * * *

(h) *Support and maintenance in kind.* This is shelter furnished to you that we value depending on your living arrangement. We use one rule if you are living throughout a month in another person's household receiving all your shelter from others living in the household. We use different rules for other situations in which you receive shelter. We discuss all of the rules in §§ 416.1130 through 416.1148.

6. Amend § 416.1130 by revising paragraphs (a), the first, sixth and seventh sentence in paragraph (b) and paragraph (c) to read as follows:

§ 416.1130 Introduction.

(a) *General.* Both earned income and unearned income include items received in kind (see § 416.1102). Generally, we value in-kind items at their current market value, and we apply the various exclusions for both earned and unearned income. However, we

have special rules for valuing shelter that is received as unearned income (in-kind support and maintenance). This section and the ones that follow discuss these rules. In these sections (i.e., §§ 416.1130 through 416.1148) we use the in-kind support and maintenance you receive in the month as described in § 416.420 to determine your SSI benefit. We value the in-kind support and maintenance using the Federal benefit rate for the month in which you receive it. *Exception:* For the first 2 months for which a cost-of-living adjustment applies, we value in-kind support and maintenance you receive using the VTR or PMV based on the Federal benefit rate as increased by the cost-of-living adjustment.

Example: Mr. Jones resides in his son's house. Mr. Jones receives a monthly SSI Federal benefit rate that is reduced by one-third. This one-third represents the value of the income he receives because he lives in the household of a son, throughout a month, who provides all of his shelter (in-kind support and maintenance). In January, we increase his SSI benefit because of a cost-of-living adjustment. We determine his SSI payment for that month considering the shelter he received from his son two months earlier in November. In determining the value of that shelter he received in November, we use the Federal benefit rate for January.

(b) * * * We calculate in-kind support and maintenance considering any shelter that is given to you or that you receive because someone else pays for it. * * * In those States, if the required amount of rent is less than the presumed maximum value, we will consider as in-kind support and maintenance the difference between the required amount of rent and either the presumed maximum value or the current market value, whichever is less. In addition, cash payments made to uniformed service members as allowances for on-base housing or privatized military housing are in-kind support and maintenance. * *

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(c) *How we value in-kind support and maintenance.* We have two rules for valuing the in-kind support and maintenance that we must count. The one-third reduction rule applies if you are living in the household of a person who provides you with shelter, unless we determine that you buy your food separately from the household, eat all meals out, or receive Supplemental Nutrition Assistance Program benefits (see §§ 416.1131 through 416.1133). The presumed value rule applies in all other situations in which you receive countable in-kind support and maintenance (see §§ 416.1140 through 416.1145). If certain conditions exist, we do not count in-kind support and maintenance. These conditions are discussed in §§ 416.1141 through 416.1145.

* * * * *

7. Amend § 416.1131 by revising paragraph (a)(2) and adding paragraph (a)(3) to read as follows:

§ 416.1131 The one-third reduction rule.

(a) * * *

(2) Receive shelter from others living inside the household or from a combination of others living inside the household and others living outside the household. (If you do not receive shelter from others living in the household, see § 416.1140.)

(3) Do not buy food separately from the household, eat all meals out, or receive Supplemental Nutrition Assistance Program benefits. If you buy food separately from the household, eat all meals out, or receive Supplemental Nutrition Assistance Program benefits, any ISM received for shelter will be calculated under the PMV rule (see § 416.1140).

* * * * *

8. Amend § 416.1133 by revising the last sentence of paragraph (a) and the first

sentence of paragraph (c) to read as follows:

§ 416.1133 What is a pro rata share of household operating expenses.

(a) * * * (If you are receiving shelter from someone outside the household, we value it under the rule in § 416.1140.)

* * * * *

(c) Household operating expenses are the household's total monthly expenditures for rent, mortgage, property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection service. * * *

9. Amend § 416.1140 by revising to read as follows:

§ 416.1140 The presumed value rule.

(a) *How we apply the presumed value rule.* (1) When you receive in-kind support and maintenance and the one-third reduction rule does not apply, we use the presumed value rule. Instead of determining the actual dollar value of any shelter you receive, we presume that it is worth a maximum value. This maximum value is one-third of your Federal benefit rate plus the amount of the general income exclusion described in § 416.1124(c)(12).

(2) The presumed value rule allows you to show that your in-kind support and maintenance is not equal to the presumed value. We will not use the presumed value if you show us that—

(i) The current market value of any shelter you receive, minus any payment you make for it, is lower than the presumed value; or

(ii) The actual amount someone else pays for your shelter is lower than the presumed value.

(b) *How we determine the amount of your ISM under the presumed value rule.* (1) If you choose not to question the use of the presumed value, or if the presumed value is less than the actual value of the shelter you receive, we use the presumed value to figure

your ISM.

(2) If you show us, as provided in paragraph (a)(2) of this section, that the presumed value is higher than the actual value of the shelter you receive, we use the actual amount to figure your ISM.

10. Amend § 416.1147 by revising paragraph (a), the paragraph heading in paragraph (b) and first sentence in paragraph (b)(1), paragraph (c) and the third sentence in paragraph (d)(1) to read as follows:

§ 416.1147 How we value in-kind support and maintenance for a couple.

(a) Both members of a couple live in another person's household and receive shelter from others living in the household or a combination of others living inside the household and others living outside the household. When both of you live in another person's household throughout a month and receive shelter from others living in the household or a combination of others living inside the household and others living outside the household, we apply the one-third reduction to the Federal benefit rate for a couple (§ 416.1131).

(b) One member of a couple is in a medical institution and the other member of the couple lives in another person's household and receives shelter from others living in the household or a combination of others living inside the household and others living outside the household. (1) If one of you is living in the household of another person who provides you with shelter, and the other is temporarily absent from the household as provided in § 416.1149(c)(1) (in a medical institution that receives substantial Medicaid payments for his or her care (§ 416.211(b))), and is ineligible in the month for either benefit payable under § 416.212, we compute your benefits as if you were separately eligible individuals (see § 416.414(b)(3)). * * *

(c) Both members of a couple are subject to the presumed value rule. If the presumed value rule applies to both of you, we value any shelter you and your spouse

receive at one-third of the Federal benefit rate for a couple plus the amount of the general income exclusion (§ 416.1124(c)(12)), unless you can show that its value is less as described in § 416.1140(a)(2).

(d) * * *

(1) * * * We value any shelter received by the one outside of the medical institution at one-third of an eligible individual's Federal benefit rate, plus the amount of the general income exclusion (§ 416.1124(c)(12)), unless you can show that its value is less as described in § 416.1140(a)(2). * * *

* * * * *

11. Amend § 416.1148 by revising paragraph (b) to read as follows:

§ 416.1148 If you have both in-kind support and maintenance and income that is deemed to you.

* * * * *

(b) *The presumed value rule and deeming of income.* (1) If you live in the same household with someone whose income can be deemed to you (§§416.1160 through 416.1169), or with a parent whose income is not deemed to you because of the provisions of §416.1165(i), any shelter that person provides is not income to you. However, if you receive any shelter from another source, it is income and we value it under the presumed value rule (§416.1140). We also apply the deeming rules.

(2) If you are a child under age 18 who lives in the same household with an ineligible parent whose income may be deemed to you, and you are temporarily absent from the household to attend school (§ 416.1167(b)), any shelter you receive at school is income to you unless your parent purchases it. Unless otherwise excluded, we value this income under the presumed value rule (§ 416.1140). We also apply the deeming rules to you (§ 416.1165).

12. Amend § 416.1149 by revising paragraph (c)(1)(i) and (ii) to read as follows:

§ 416.1149 What is a temporary absence from your living arrangement.

* * * * *

(c) * * *

(1)(i) If you enter a medical treatment facility where you are eligible for the reduced benefits payable under § 416.414 for full months in the facility, and you are not eligible for either benefit payable under § 416.212 (and you have not received such benefits during your current period of confinement) and you intend to return to your prior living arrangement, we consider this a temporary absence regardless of the length of your stay in the facility. We use the rules that apply to your permanent living arrangement to value any shelter you receive during the month (for which reduced benefits under § 416.414 are not payable) you enter or leave the facility. During any full calendar month you are in the medical treatment facility, you cannot receive more than the Federal benefit rate described in § 416.414(b)(1). We do not consider shelter provided during a medical confinement to be income.

(ii) If you enter a medical treatment facility and you are eligible for either benefit payable under § 416.212, we also consider this a temporary absence from your permanent living arrangement. We use the rules that apply to your permanent living arrangement to value any shelter you receive during the month you enter the facility and throughout the period you are eligible for these benefits. We consider your absence to be temporary through the last month benefits under § 416.212 are paid unless you are discharged from the facility in the following month. In that case, we consider your absence to be temporary through the date of discharge.

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